

STATE OF MICHIGAN  
COURT OF APPEALS

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HANY ROFA,

Plaintiff-Appellant,

v

DECISION ONE MORTGAGE COMPANY,  
L.L.C.,

Defendant,

and

COUNTRY WIDE HOME LOANS, and  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.,

Defendants-Appellees.

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UNPUBLISHED

May 10, 2011

No. 296668

Oakland Circuit Court

LC No. 2009-104156-CH

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order entering default judgment against defendant Decision One Mortgage Company (Decision One)<sup>1</sup> and quieting title in favor of defendant Mortgage Electronic Registration Systems, Inc. (MERS). Plaintiff relies on an earlier default judgment entered by the trial court against defendant Decision One, in which the trial court ruled that her mortgage was void. However, this judgment was superseded by the court's final order, and that finding was no longer part of the court's judgment. Accordingly, we affirm.

Plaintiff gave a mortgage to Decision One that was serviced by Countrywide. Plaintiff defaulted on the mortgage and Countrywide foreclosed. MERS bought the property at the

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<sup>1</sup> Decision One Mortgage Company was a subsidiary of HSBC Finance Corporation. It shut down its mortgage lending operations in late 2007. See, e.g., *Misra v Decision One Mortgage Co, LLC*, 673 F Supp 2d 987, 990-991 (CD Cal, 2008).

sheriff's sale. Plaintiff did not attempt to redeem the property but brought this lawsuit against defendants, alleging fraud and misrepresentation by Decision One and Countrywide and asserting that the mortgage was fraudulently obtained and therefore void. Plaintiff asked the court to enter a judgment quieting title to the property in her favor and enjoining the attempts to dispossess her of the premises.

MERS and Countrywide sought summary disposition, arguing that plaintiff failed to state a claim of fraud because her allegations were only conclusory, and that the alleged misrepresentations were simply oral promises and opinions and not enforceable under the statute of frauds and not actionable for fraud. They asserted that because plaintiff's fraud claim was insufficient, the mortgage was valid and there was no basis for the quiet title claim. The court agreed, and an order dismissing all counts against MERS and Countrywide was entered on January 21, 2010. On January 13, 2010, plaintiff sought a default against Decision One, which had failed to appear. Plaintiff did not serve MERS or Countrywide with notice. On January 19, 2010, plaintiff moved for entry of default judgment, stating that MERS and Countrywide had been dismissed from the case "on their motion and order of the court." Again, plaintiff did not send notice of any of these actions to MERS or Countrywide.

On January 28, 2010, the trial court signed plaintiff's "Default judgment quieting title." The judgment provided that the mortgage between plaintiff and Decision One "is declared void by reason of fraud" and that "the subsequent foreclosure and sheriff's sale are likewise declared void." The judgment quieted title in plaintiff's name. MERS learned of this judgment when it attempted to evict plaintiff in summary proceedings. MERS and Countrywide immediately filed a motion to correct the default judgment under MCR 2.612(C), arguing that the default judgment contradicted the court's earlier order in which it dismissed plaintiff's quiet title claim and ruled the foreclosure sale was valid. They argued that, under the first order, title belonged to MERS. Plaintiff argued that defendants could only take good title if Decision One had good title, but that Decision One's claim to title failed. Defendants' remedy, plaintiff argued, was against Decision One.

The court granted defendants' motion. The final order "corrected and superseded" the default judgment. The court ordered that "a default judgment in favor of plaintiff and against defendant Decision One Mortgage Company, LLC ('Decision One') is entered." It further ordered that plaintiff's title to the property "is superior to defendant Decision One only," that the foreclosure sale was valid, and that title was quieted in favor of MERS.

On appeal, plaintiff argues that MERS could not take title to the property because the mortgage had been declared void. Thus, she argues, Decision One did not have any valid title to convey. However, the court's final order expressly "corrected and *superseded*" the default judgment. (Emphasis added.) "Supersede" means to "[o]bliterate, set aside, annul, replace, make void, inefficacious or useless, repeal. To set aside, render unnecessary, suspend, or stay." Black's Law Dictionary (5th ed). In other words, the first default judgment became a nullity and only the provisions of the corrected judgment retained the force of law. The only decisions favorable to plaintiff were the default judgment against Decision One and the court's determination that plaintiff's claim of title was superior to that of Decision One. Nothing in the final order purported to rule the mortgage void.

A trial court's decision to correct its earlier judgment will stand absent an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999). A trial court has not abused its discretion if its decision falls within the range of principled outcomes. *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007). Here, plaintiff failed to serve defendants with the papers relating to the default at a time when they were parties to the suit. MCR 2.107(A)(1); MCR 2.603(A)(2). Failure to give the notice required by MCR 2.603 invalidates the judgment. *Gavulic v Boyer*, 195 Mich App 20, 25; 489 NW2d 124 (1992), overruled on other grounds *Allied Elec Supply Co v Tenaglia*, 461 Mich 285 (1999). We perceive no abuse of discretion in the trial court's correction of its earlier judgment.

Affirmed.

/s/ Henry William Saad  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly